

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In re: PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESAL PRICE
LITIGATION,

MDL No. 1456

Civil Action No. 01-12257-PBS

THIS DOCUMENT RELATES TO THE
MASTER CONSOLIDATED CLASS
ACTION

NON-PARTY FALLON COMMUNITY HEALTH PLAN, INC.’S
MOTION TO STAY DISCOVERY

Non-Party Fallon Community Health Plan, Inc. (“Fallon”), by its attorneys, Nelson, Kinder, Mosseau & Saturley, PC, and pursuant to Local Rule 7.1, respectfully submits the following Motion to Stay the Discovery sought of it by Defendant, Dey, Inc. (“Dey”). In further support of this Motion, Fallon states as follows:

1. Fallon is an absent class member health plan.
2. On or about November 21, 2005, Dey served a Subpoena upon Fallon seeking the production of an enormously broad range of documents, and a Rule 30(b)(6) witness to testify concerning 33 separate issues.
3. Dey likewise served similar Subpoenas upon other absent class member health plans. To date, the Plaintiffs as well as absent class members Tufts Associated Health Plans, Inc. and Neighborhood Health Plan, Inc. have each moved to quash Dey's Subpoenas, raising substantial concerns as to the scope and appropriateness of the requested third party discovery. Such concerns apply with equal force to the discovery sought of Fallon.

4. Although Fallon engaged counsel to represent it with respect to the Subpoena, a conflict of interest was subsequently discovered, and the undersigned counsel for Fallon were only recently engaged to represent it with respect to this Subpoena. Fallon has objected to the subpoena, and intends to file its own Motion to Quash.

5. Under these circumstances, and in the interest of not subjecting Fallon to extraordinary expenses that might, ultimately, be unnecessary, Fallon respectfully requests that this Court stay any attempted enforcement of the Subpoena served against it until such time as the merits of the pending Motions to Quash have been resolved.

6. In accordance with Local Rule 7.1(B)(1), a Memorandum of Law is attached.

WHEREFORE, Fallon respectfully requests that this Honorable Court:

A. Stay any attempted enforcement of the Subpoena served against it in this matter until such time as the pending Motions to Quash filed by the Plaintiffs and absent class member health plans have been resolved; and

B. Grant such other and further relief as this Court deems just.

Respectfully submitted,

FALLON COMMUNITY HEALTH PLAN, INC.

By its attorneys,

NELSON, KINDER, MOSSEAU
& SATURLEY, PC

Dated: January 5, 2006

By: /s/ William C. Saturley, Esquire
Peter W. Mosseau, Esquire (BBO #358060)
William C. Saturley, Esquire (BBO #442800)
99 Middle Street
Manchester, NH 03101
603-647-1800

CERTIFICATE OF COMPLIANCE

I hereby certify that, in compliance with Local Rules 7.1 and 37.1, I conferred with counsel for Dey to resolve the issue raised by this motion. Specifically, I corresponded and exchanged telephone messages with counsel for Dey, Lorianne Trewick, regarding the relief requested herein, and spoke with her by telephone on January 4, 2006, in a good faith attempt to resolve the issues set forth in this motion.

Dated: January 5, 2006

By: /s/ William C. Saturley, Esquire
William C. Saturley, Esquire

CERTIFICATE OF SERVICE

I, William C. Saturley, counsel to Fallon Community Health Plan, Inc., hereby certify that on the 5th day of January, 2006, I caused copies of Non-Party Fallon Community Health Plan, Inc.'s Motion to Stay Discovery to be served electronically on all counsel of record.

Dated: January 5, 2006

By: /s/ William C. Saturley, Esquire
William C. Saturley, Esquire